



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **200739011**

Release Date: 9/28/07

Date: July 6, 2007

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL 4942.03-07

Legend:

A =
B =
M =
N =
X =
Y =
Z =

Dear _____ :

This is in reply to your written request of September 13, 2005, for approval of a set-aside under section 4942(g)(2) of the Internal Revenue Code. You have been recognized as exempt under section 501(c)(3) of the Code and have been determined to be a private foundation under section 509(a) of the Code.

You have pledged X toward a construction project of A to build a brand new 50,000 square foot full-service facility in B to provide an outlet for youth in the community, assist in combating obesity and provide general health programs for the whole family, including seniors. These purposes are consistent with the purposes of the Foundation.

You request a set-aside amount of Y in the Year M. Of the X pledge, you paid Z in Year M toward this commitment. You provided specific information that describes the project and estimated amounts required to complete the project. It was anticipated that the construction of the facility would begin in Year M and would span a period of several years.

You have provided a representation that amounts set aside will actually be paid within 60 months after the date of the first set-aside. You also provided information that shows that the project can be better accomplished by a set-aside than by the immediate payment of funds for two reasons. The first reason is that spending for construction of the facility will be made over time, and A was still in the process of planning the design and construction of the facility when

the set-aside was made. You state that it is customary in the construction industry to pay for the work performed on an “as work is done” basis, which will promote the proper and timely completion of the facility, and that it was anticipated that significant expenditures for the construction of the facility would not begin to be made by A until Year N. The second reason in favor of the set-aside is that, at the time of the set-aside, you had just received and begun to invest the majority of your funding and thought it more prudent to spread out disbursements rather than to disburse all funds before the investment returns could be adequately evaluated. Additionally, you would not have been able to fund any other disbursements for charitable purposes without the use of the set-aside.

Section 4942(g)(2)(A) of the Code states that an amount set aside for a specific project which comes within one or more purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution if it meets the requirements of subparagraph (B) of Section 4942(g)(2).

Section 4942(g)(2)(B) of the Code states that an amount set aside for a specific project shall meet the requirements of this subparagraph if, at the time of the set-aside, the foundation establishes to the satisfaction of the Secretary that the amount will be paid for the specific project within 5 years and either clause (i) or (ii) are satisfied.

Section 4942(g)(2)(B)(i) of the Code is satisfied if, at the time of the set-aside, the private foundation establishes to the satisfaction of the Secretary that the project is one which can better be accomplished by such set-aside than by immediate payment of funds.

Section 53.4942(a)-3(b)(1) of the Foundations and Similar Excise Taxes Regulations provides that a private foundation may establish that a project is one which can be better accomplished by a set-aside than by immediate payment of funds if the set-aside satisfies the suitability test described in subparagraph (2) of this paragraph.

Section 53.4942(a)-3(b)(2) of the regulations provides that specific projects that can be better accomplished by the use of a set-aside include, but are not limited to, projects in which relatively long-term grants or expenditures must be made that require an expenditure of more than one year's income in order to assure the continuity of particular charitable projects.

The proposed set-aside will be used to accomplish purposes described in Section 170(c)(2)(B), as the set-aside will be used to construct a facility which will be used for charitable purposes, including providing an outlet for youth in the community, assisting in combating obesity and providing general health programs for the whole family, including seniors. As further described above, the set-aside satisfies the suitability test given the long-term nature and extent of the project and the fact that significant expenditures to construct the facility were not anticipated to be made by A until the Year N and are expected to be spread out over a few years. Further, the amount set aside will actually be paid within 60 months after the date of the first set-aside. Accordingly, the set-aside meets the requirements of Section 4942(g)(2)(B) of the Internal Revenue Code and Section 53.4942(a)-3(b)(2) of the regulations and, accordingly, constitutes a qualifying distribution under Section 4942(g).

Based on the information furnished, your set-aside is approved under section 4942(g)(2) of the Code. As required under section 4942(g)(2), the set aside amount must be paid within the 60 month period after the date of the first set-aside.

Your approved set-aside shall be evidenced by the entry of the dollar amounts involved on your books and records as pledges or obligations to be paid by the date specified. The amounts set aside will be taken into account for purposes of determining your minimum investment return under section 4942(e)(1)(A) of the Code, and the income attributable to your set aside will also be taken into account in computing your adjusted net income under section 4942(f) of the Code.

This letter will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this letter with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent. If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney and Declaration of Representative currently on file with the Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437